IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ABC BAIL BONDS, INC.,	:	
	:	
Plaintiff, and	:	
	:	CIVIL ACTION
FRANCIS X. GALLEN,	:	NO. 02-1782
	:	
Plaintiff.	:	
	:	
v.	:	
	:	
HENRY S. PERKIN, ESQUIRE, Lehigh County Solicitor,	:	
	:	
Defendant, and	:	
	:	
COUNTY OF LEHIGH, PENNSYLVANIA,	:	
	:	
Defendant.	:	
	:	
	:	

Memorandum and Order

YOHN, J. JULY , 2002

Francis X. Gallen, a bail bondsman, and ABC Bail Bonds, Inc. (ABC), his employer, filed a complaint against Henry S. Perkin, Esq., the Lehigh County Solicitor, and the County of Lehigh, Pennsylvania, seeking damages and equitable relief under 42 U.S.C. § 1983 and state law arising out of the potential enforcement of a local court rule concerning the writing of bail bonds by surety agents. The County and Perkin filed a motion to dismiss, which Gallen and ABC contest. I find plaintiffs' action to be not yet ripe for review under Article III, and therefore grant the defendants' motion to dismiss.

Background

As necessary in evaluating a motion to dismiss, the following facts are construed from the complaint in the light most favorable to the plaintiffs as the non-moving party. *Cowell v. Palmer Township*, 263 F.3d 286, 290 (3d Cir. 2001).

The complaint alleges that, from 1995 until May of 1998, Gallen was employed as a surety agent by Capital Bonding and/or Vincent J. Smith Bail Bonds, which were in the business of providing bail bonds to criminal defendants before Lehigh County courts. Compl. ¶ 13. The corporate surety for these companies was Frontier Insurance Company and its affiliates (collectively described as "Frontier"). *Id*. ¶ 12.

Perkin prepared a list current as of December 28, 2001, which showed all of the Lehigh County cases in which Gallen had executed a bail bond as surety agent, the bail was forfeited, and the forfeiture was still unsettled and outstanding. *Id*. ¶¶ 16, 17. Frontier had been the surety for each of the bonds. *Id*. at Ex. C. The total of these unsettled and outstanding forfeitures was $85,000. *Id*.

Lehigh County Rule of Criminal Procedure 4011(B)(2) states in pertinent part that:

> "No [bail] bond shall be executed by any surety agent . . . where the aggregate maximum amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds . . . is $ 100,000." Lehigh County R. Crim. P. 4011(B)(2).

In June of 1998, Gallen began working as a surety agent for ABC. Compl. ¶ 9. The corporate surety for ABC's bail bonds is Lexington National Insurance Corporation. *Id*. ¶ 32.

For ABC, Gallen has now executed bail bonds in excess of $ 15,000 for cases pending in the Court of Common Pleas of Lehigh County and in the Magisterial District Courts of Lehigh County. *Id*. ¶ 35. The complaint alleges that, should those courts order bail forfeited in any of these cases, and the aggregate amount of forfeitures be in excess of $15,000, Perkin will prohibit Gallen from executing bonds in Lehigh County cases.[1] *Id*. ¶ 36.

Gallen claims a liberty interest in being able to pursue his occupation as protected by the Fourteenth Amendment. *Id*. ¶¶ 54 - 55. He also claims a property interest in the state license authorizing him to write bail bonds in Pennsylvania, which would allegedly be impinged without due process by Perkin and the County's actions. *Id*. ¶¶ 48 - 51. ABC contends that it will suffer immediate and irreparable harm if and when Perkin and the County prohibit Gallen from executing bail bonds because it has no one else "readily available" to write bail bonds in Lehigh County. *Id*. ¶ 46.

The complaint does not allege that either the County or Perkin has moved to bar Gallen from issuing bail bonds in Lehigh County at this time. Nor does the complaint allege that bail has been forfeited on any of the bail bonds that Gallen executed while employed by ABC or that, if bail is forfeited, the forfeiture amount will not be paid by Lexington National Insurance Corporation. Thus, it remains to be seen whether any of the bonded defendants will fail to appear for trial or for other court appearances; whether their bail will be forfeited if they do not appear; whether Lexington National Insurance Corporation will pay the forfeited amount if the

[1]Gallen and ABC attach to their complaint a letter from Perkin's office relating that the "county solicitor has determined that the aggregate amount of unsettled and outstanding bail forfeitures supplied to Mr. Gallen include those written by him during his association with Capital Bonding/Vincent J. Smith Bail Bonds," but does not describe any action that the office plans to take. Compl. at Ex. C.

bonded defendants cannot be located and brought into court; and whether the County and Perkin will seek to prevent Gallen from issuing further bail bonds if he does, in fact, exceed the $100,000 limit of unsettled and outstanding bail forfeitures established by the local rule.

Standard of Review

In ruling on a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in the plaintiffs' complaint, and must determine whether "under any reasonable reading of the pleadings, the plaintiff[s] may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996) (citations omitted); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665-66 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989) (citations omitted). Although the court must construe a complaint in the light most favorable to the plaintiffs, it need not accept as true legal conclusions or unwarranted factual inferences. *Conley v. Gibson*, 355 U.S. 41, 45 - 46 (1957). Claims should be dismissed only if "it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Id*.

Discussion

Lehigh County and Perkin make two arguments in support of their motion to dismiss. Their first argument is that plaintiffs' action is not yet ripe to be heard by a federal court under the constraints of Article III. Doc. No. 10 at 4; U.S. Const. art. III, § 2 (establishing that the judicial power of the United States extends only to actual cases and controversies). Their second argument is that this court should apply a version of either *Pullman* or *Burford* abstention to

decline to hear the action as it should be litigated in state courts. Doc. No. 10 at 4 - 6; *see Railroad Comm'n of Texas v. Pullman*, 312 U.S. 496 (1941) (holding that federal courts should abstain from deciding questions of constitutional law when a case may be disposed of on state law grounds); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (holding that federal courts should abstain from needless conflict with a state's administration of its own affairs). As I find that the action is not yet ripe for judicial review under Article III, I dismiss the complaint on this ground and need not reach the defendants' second argument.

Ripeness

Although most courts have addressed the issue of ripeness in the context of declaratory judgment actions, all actions before federal courts must meet the case or controversy requirement under Article III. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950). As the Third Circuit has written, Article III generally requires that an action present "a legal controversy that is real and not hypothetical, . . . affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and . . . [sharpens] the issues for judicial resolution." *Armstrong World Industries, Inc. v. Adams*, 961 F.2d 405, 410 (3d Cir. 1992) (quoting *International Bhd. of Boilermakers v. Kelly*, 815 F.2d 912, 915 (3d Cir. 1987)). Among the doctrines developed specifically to limit federal jurisdiction under Article III is the ripeness doctrine. *Id*. at 411. Ripeness, in the words of the Third Circuit, "determines when a proper party may bring an action." *Travelers Ins. Co. v. Obusek*, 72 F.3d 1148, 1154 (3d Cir. 1995). The doctrine thus restrains federal courts from issuing advisory opinions, and prevents them from

entangling themselves in abstract disagreements. *Flast v. Cohen*, 392 U.S. 83, 96 (1968); *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967).

Admittedly, there is often a fine line between actions that are ripe for review and those that are not. *NE Hub Partners, L.P. v. CNG Transmission Corporation*, 239 F.3d 333, 341 (3d Cir. 2001) ("Ripeness is a matter of degree whose threshold is notoriously hard to pinpoint."). In determining whether an action is ripe for review before the federal courts, however, the Supreme Court has articulated two fundamental considerations. *Id.*; *Abbott Labs.*, 387 U.S. at 149. First, courts must determine "the fitness of the issues for judicial decision." *Abbott Labs.*, 387 U.S. at 149. Second, courts must determine the potential "hardship to the parties of withholding court consideration." *Id*. As the Third Circuit has interpreted these criteria, factors relevant to the "fitness" consideration include, but are not limited to, "whether the issue is purely legal (as against factual), the degree to which the challenged action is final, whether the claim involves uncertain and contingent events that may not occur as anticipated or at all, the extent to which further factual development would aid decision, and whether the parties to the action are sufficiently adverse." *NE Hub Partners*, 239 F.3d at 341 n.8 (citing *Philadelphia Federation of Teachers v. Ridge*, 150 F.3d 319, 322 (3d Cir. 1998)). The "hardship" consideration focuses on whether "a plaintiff faces a direct and immediate dilemma, such that lack of review will put it to costly choices."[2] *Id*. It is the plaintiffs' responsibility to allege facts sufficient to invoke the

[2] Gallen and ABC do not request a declaratory judgment under 28 U.S.C. §§ 2201 - 02, so the Third Circuit's additionally refined analysis in *Step-Saver* for determining ripeness in the context of declaratory judgments does not apply. *Step-Saver Data Sys. Inc. v. Wyse Technology*, 912 F.2d 643, 646 - 47 (3d Cir. 1990); Declaratory Judgment Act, 28 U.S.C. §§ 2201 - 02 (2001).

federal courts' jurisdiction. *Presbytery of New Jersey v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994) (citing *Renne v. Geary*, 501 U.S. 312, 316 (1991)).

Turning first to whether the action that Gallen and ABC bring before this court is fit for judicial decision, I find that their claim involves uncertain and contingent events that may not occur as anticipated or at all. *Abbott Labs.*, 387 U.S. at 149; *NE Hub Partners*, 239 F.3d at 341 n.8. As noted above, it is uncertain whether the $ 15,000 in bonds Gallen has written while employed by ABC will even be forfeited. Whether those bonds are ever forfeited depends on both the actions of the bonded criminal defendants, and the judge who may or may not forfeit the bond of an absent defendant. Whether a forfeited bond remains unsettled and outstanding depends on ABC/Lexington's own decision in the future whether it will pay any forfeitures to the County and on whether a fugitive defendant is apprehended and a judge remits the forfeiture. The facts of the plaintiffs' legal situation are also far from finalized as the County has made no move to bar Gallen from writing bonds before its courts. Further development of this situation will substantially aid the judicial decision-making process, and the potential action of the County against Gallen is not only not final, it has not yet begun.

This action is clearly distinguishable from the case Gallen and ABC heavily rely on as precedent. In *Presbytery of New Jersey v. Florio*, 40 F.3d 1454 (3d Cir. 1994), the Third Circuit found that a pastor's action challenging a state law was ripe because he would be subject to enforcement immediately were it to be implemented. *Id*. at 1468. Gallen and ABC, however, face no such parallel threat. Their bonded defendants have yet to default; the bonds at issue have not been forfeited; ABC/Lexington has yet to decide not to honor its obligation to the County for the amount of any forfeiture; and the County has yet to make any move to bar Gallen from

issuing bonds before its courts. *See generally* Compl. The facts of Gallen and ABC's action are then more closely analogous to those in *Philadelphia Federation of Teachers v. Ridge*, 150 F.3d 319 (3d Cir. 1998), in which the Third Circuit held that several unions' challenge to a law modifying Pennsylvania's system of workers' compensation was *not* ripe because it could not be certain when the statute would necessarily operate against any of the unions' members or how it would do so.[3] *Id*. at 324.

Moreover, turning to the second prong of the Supreme Court's test for ripeness, Gallen and ABC face no hardship that is a direct and immediate dilemma putting them to costly choices. *Abbott Labs*., 387 U.S. at 149; *NE Hub Partners*, 239 F.3d at 341 n.8. Gallen has not lost his state license to execute bail bonds, and remains free to practice his occupation. According to the pleadings, he continues to work for ABC. The full extent of ABC's assertion that it faces direct and immediate hardship is that, if Gallen were no longer able to execute bonds, it would have no other bailbonding agent currently "readily available" to write bonds for ABC in Lehigh County. Compl. ¶ 46. Without evidence that Gallen's skills are particularly unique and/or that there is

[3] Among the contingencies that the Third Circuit noted, the unions' members must fulfill all of the new statute's requirements that "(1) one of the members must suffer a compensable work-related injury after the effective date of Act 57, (2) the same member must be classified as totally disabled, (3) such total disability must continue for a period of 104 weeks and not be changed because of the insurer's successful demonstration of earning power, (4) after the member's receipt of 104 weeks of total disability benefits, the insurer must request that the member submit to an impairment rating evaluation, (5) the evaluation must result in an impairment rating of less than 50 percent under the American Medical Association's Guides to the Evaluation of Permanent Impairment, (6) the insurer must adjust the disability status of the member from total to partial, and (7) the member must, over a period of 500 weeks, be unable to demonstrate that the impairment is greater than 50 percent." *Philadelphia Federation of Teachers v. Ridge*, 150 F.3d 319, 324 n.6 (3d Cir. 1998). The Third Circuit was convinced that members of the unions would eventually be affected by the new statute, but noted that there remained a "great deal of uncertainty" regarding *how* the statute would operate when it actually applied. *Id*. at 324.

some unusual shortage of labor in the field of writing bonds, this is a less than compelling argument for intervention by the federal courts. Gallen and ABC bear the burden to assert facts sufficient to invoke federal jurisdiction. *Renne v. Geary*, 501 U.S. 312, 316 (1991). But neither alleges a direct or immediate dilemma. I therefore find no hardship which should weigh in this prong of the ripeness doctrine. *Id.*; *Abbott Labs.*, 387 U.S. at 149; *Presbytery of New Jersey*, 40 F.3d at 1462.

Accordingly, Gallen and ABC's action is not ripe. Too many contingencies exist before they may be threatened by application of the Lehigh County court's local rule, and the law is clear that federal courts may not act in such circumstances. *See, e.g., Armstrong World Indus.*, 961 F.2d at 413 - 14 (finding that an action was not ripe because the takeover of a company was a "contingency which may not occur," and in which case the plaintiffs would not suffer from passage of a law); *see also Presbytery of New Jersey*, 40 F.3d at 1470 (discussing why the court should not act on a "contingency"). I therefore grant the defendants' motion to dismiss on this ground and need not reach their second argument.

Conclusion

For the reasons stated above, I find that Gallen and ABC's complaint is not ripe and grant the County and Perkin's motion to dismiss on this ground. Multiple contingencies render this action not fit for judicial decision at this time, and the outcomes of those contingencies lie in the hands of the parties, the County courts, and ABC's non-party bonded defendants. *Philadelphia Federation of Teachers*, 150 F.3d at 322; *NE Hub Partners*, 239 F.3d at 341 n.8. Moreover, Gallen and ABC do not now face hardship of the magnitude that rises to a direct and immediate

dilemma such that lack of review will put them to costly choices. *Abbott Labs*., 387 U.S. at 149; *Armstrong World Indus.*, 961 F.2d at 413 - 14. Accordingly, their action is barred by the constraints of Article III, and will be dismissed. An appropriate order follows.

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COUNTY OF LEHIGH, PENNSYLVANIA,	:	
	:	
Defendant.	:	
	:	
	:	

Order

And now, this day of July 2002, after careful consideration of defendants' motion to dismiss (Doc. No.10), and plaintiffs' responses thereto (Doc. Nos. 12 & 13), for the reasons set forth in the accompanying Memorandum it is hereby ORDERED that defendants' motion to dismiss (Doc. No. 10) is GRANTED and plaintiffs' complaint is DISMISSED without prejudice.

BY THE COURT:

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William H. Yohn, Jr., Judge